

PTO/5B/21 (09-04)

Approved for use through 07/31/2006. OMB 0851-0031

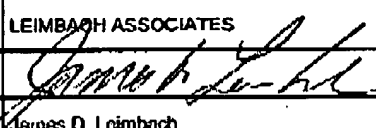
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

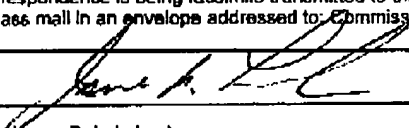
<b>TRANSMITTAL FORM</b>  <small>(to be used for all correspondence after initial filing)</small>	Application Number	09/548,727	<b>RECEIVED</b> <b>CENTRAL FAX CENTER</b>  <b>AUG 30 2006</b>
	Filing Date	04/13/2000	
	First Named Inventor	Johan C. Tolstra	
	Art Unit	2618	
	Examiner Name	Vincent F. Boccia	
Total Number of Pages in This Submission	9	Attorney Docket Number	PHN 1/410

ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached  <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s)  <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement  <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.63	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers  <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC  <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
Remarks Enclosed is an Reply Brief.		

**SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT**

Firm Name	LEIMBACH ASSOCIATES		
Signature			
Printed name	James D. Leimbach		
Date	August 30, 2006	Reg. No.	34,374

**CERTIFICATE OF TRANSMISSION/MAILING**

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.			
Signature			
Typed or printed name	James D. Leimbach	Date	August 30, 2006

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

1

RECEIVED  
CENTRAL FAX CENTER

AUG 30 2006

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE BOARD OF PATENT APPEALS AND**  
**INTERFERENCES**

In re Application of  
Johan C. Talstra, et al.

METHOD AND SYSTEM OF  
COPY PROTECTION OF  
INFORMATION

Serial No. 09/548,727

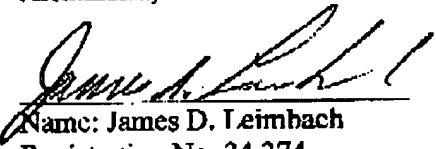
Filed: April 13, 2000

Confirmation No. 7176

Group Art Unit: 2616

Examiner: Vincent P. Boccio

CERTIFICATE OF TRANSMISSION  
I hereby certify that this correspondence  
is being transmitted on this date via  
facsimile transmission to (571) 273-8300  
AND addressed to:  
Mail Stop: Amendment  
COMMISSIONER OF PATENTS  
P.O. Box 1450  
Alexandria, VA 22313-1450

  
Name: James D. Leimbach  
Registration No. 34,374  
Date: April 3, 2006

VIA FACSIMILE TRANSMISSION TO (571) 273-8300  
Mail Stop Appeal Brief-Patent  
Honorable Commissioner of Patents and Trademarks  
Alexandria VA. 22313-1450

Sir:

**REPLY BRIEF UNDER 37 C.F.R. § 41.41**

This Reply Brief is being filed in response to the Examiner's Answer mailed June 30, 2006 for the above referenced application.

The Commissioner is hereby authorized to charge any fees associated with the filing of this Reply Brief, including extension fees but excluding issue fees, to Account No. 50-3745, and to credit any overpayments to the same account.

Serial No. 09/548,727

**I. The rejection of appealed claims 7, 8 and 12-21 under the provisions of 35 U.S.C. §102(b) as being anticipated by Linnartz**

Appealed claims 7, 8 and 12-21 are rejected under the provisions of 35 U.S.C. §102(b) as being anticipated by *Linnartz* (U.S. Patent No. 5,915,027). The examiner's position is that *Linnartz* disclose every element defined by appealed claims 7, 8 and 12-21.

The Examiner's Answer on the top of page 10 states that the definition of the word "derived" is given the broadest reasonable interpretation as defined in the standard Webster Dictionary. The Examiner's Answer on page 10 further asserts that "the word "derived" should be interpreted based on the known scope of the word rather than the specifics of applicants specification, which the claim language only reflects."

The appellants, respectfully, point out that the MPEP at §2111.01 states that the words of a claim must be given their "plain meaning" unless they are defined in the specification. The MPEP at §2111.01 further states that "an applicant is entitled to be his or her own lexicographer and may rebut the presumption that claim terms are to be given their ordinary and customary meaning by clearly setting forth a definition of the term that is different from its ordinary and customary meaning(s). See *In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994)."

The deriving of a first characteristic relates to summaries of selected parts of the information as discussed on page 8, lines 31-34. The rejection does not address "deriving" as used within the present invention. There is no disclosure or suggestion of "deriving" by *Linnartz* as used within the present invention.

As discussed in the Appeal Brief filed by the appellants, the exchanging copy protection information regarding a content of information contained on an information carrying medium by a reading device deriving of a first characteristic of the content of information. The characteristic of the information is used interchangeably with a summary of the information. Page 5, lines 9-12 of the specification clearly states that the summaries of selected parts of the received or transmitted information are used as characteristics, therefore, the reading and application devices comprise means for summarizing information that is transmitted and received. The deriving of a first characteristic relates to summaries of selected parts of the information as

Serial No. 09/548,727

discussed on page 8, lines 31-34. Page 11, lines 9-17 of the specification to the present invention clearly states that a summary once per second or per ten seconds should be exchanged and that the algorithm of Fig. 6 waits for 1.6 seconds, and then basically selects the  $K_0$ 'th sector after that point, where  $K_0$  is derived from the shared secret. Therefore, the term derived is clearly defined by the specification to the present invention.

Accordingly, the appellants assert that the presumption that the claim term derived be given its' the ordinary and customary definitions that the examiner alludes to in the Examiner's Answer has been rebutted by the clear definition of the derived that is different from its ordinary and customary meanings that the examiner refers to.

The rejection does not address meaning of "derive", "derived" or "deriving" as defined by the specification to the present invention. There is no disclosure or suggestion of "derived" or "deriving" by *Linnartz* as used within the present invention. The rejection apparently used "obtains" as equivalent to "derives". For the above stated reasons, "deriving of a first characteristic relates to summaries of selected parts of the information" is not disclosed or suggested by "obtained". As stated above, a summary once per second or per ten seconds should be exchanged and that the algorithm selects the  $K_0$ 'th sector after that point, where  $K_0$  is derived from the shared secret. Therefore, the term derived is clearly defined by the specification to the present invention.

Therefore, all the elements defined by appealed claim 7 are not found within *Linnartz*.

The content transmitted from the playback device to the receiver device contains the watermark. Note that the content that is compared against the retrieved watermark is not disclosed or suggest as being derived from the content that is transmitted from the playback device to the receiver device.

The Examiner's Answer on page 12 address the appellants' assertion contained in the Appeal Brief and adds that *Linnartz* teaches that physical marks are generated with seeds, while generating seeds from the physical marks is un-feasible. This is in agreement with the statements made by appellants in the Appeal Brief.

Serial No. 09/548,727

The Examiner's Answer, beginning in the middle of page 13, addresses the discussion of *Linnartz* contained in the Appeal Brief wherein the appellants state that there is no disclosure or suggestion within *Linnartz* that the ticket be transmitted from the drive to the decoder. The Examiner's Answer, in the middle of page 14, states that even if the ticket is compared with the watermark, both signals are transmitted to the comparator. The appellants assert that this statement by the examiner is tantamount to an admission by the examiner that there is no disclosure or suggestion within *Linnartz* that the ticket be transmitted from the drive to the decoder. Essentially the examiner is stating that the ticket must get to the comparator somehow, therefore, it is transmitted. The appellants assert that this statement is an admission by the examiner that there is no disclosure or suggestion within *Linnartz* that the ticket be transmitted from the drive to the decoder.

On the bottom of page 13, the Examiner's Answer cites the Abstract of *Linnartz* and on the top of page 14 states that the player (actually playback device) derives the watermark. The Abstract of *Linnartz* clearly states that the watermark is extracted by the decoder and the decoder communicates retrieved watermark information to the playback device. The playback device checks the watermark against supplemental information, such as a physical mark or control signal. There is nothing within the Abstract of *Linnartz* to substantiate the assertions made by the examiner within the Examiner's Answer that the player (playback device) derives the watermark.

#### **Appealed claims 7, 8 and 12**

The Examiner's Answer on page 15 addresses appealed claims 7, 8 and 12 and states that the examiner does not find any claim language including the word summary or summaries. Pages 13-14 of the Appeal Brief submitted by the appellants states that the characteristic of the information is used interchangeably with a summary of the information. Page 5, lines 9-12 of the specification clearly states that the summaries of selected parts of the received or transmitted information are used as characteristics. Therefore, characteristics are defined by the specification as summaries of selected parts of the received or transmitted information. The term characteristics must be interpreted in a manner consistent with the definition that is supplied by the specification, which are summaries of selected parts of the received or transmitted information. The appellants, respectfully, assert that the examiner is attempting to interpret claim terminology in

Serial No. 09/548,727

a manner that is completely inconsistent with the definitions that are provided by the specification to the present invention.

Furthermore, the examiner is attempting to use these claim terms out of the context for which they are used in the claims. For example, the Examiner's Answer on page 15 addresses statements made by the appellants on page 16 of the Appeal Brief. In response to statements made by the appellant in the Appeal Brief that "the physical mark within *Linnartz* is not transmitted by the reader," the examiner makes the statement that "all data on any wire can said to be transmitted." The examiner is completely ignoring the basic fact that the physical mark within *Linnartz* is not transmitted by the reader. The appellants, respectfully, request that the Board read the claim terminology in proper context. Therefore, if the claim reads that a reader transmits information, it is not sufficient that the same information appear anywhere on any wire within *Linnartz*.

**Appealed claims 14 and 16-21**

The appellants, respectfully, submit that the examiner's comments on pages 16 and 17 of the Examiner's Answer are self contradictory. The examiner states that that the drive within *Linnartz* hashes, adds a random number and signs the MPEG stream. The examiner then alleges that this hashing, adding a random number and signing of the content is equivalent to deriving characteristics (defined as summaries) of the content contained on the medium. The appellants assert that the MPEG is the content on the medium and that the hashes, random numbers and signatures are in addition to the content. The examiner fails to show that the hashes, random numbers and signatures are in any way related to the content contained on the medium.

**II. The rejection of appealed claims 1-4, 6 and 9-11 under the provisions of 35 U.S.C. §103(a) as being obvious over *Linnartz* in view of *Cox et al.***

The examiner on page 18 of the Examiner's Answer states that *Cox et al.* (U.S. Patent No. 5,915,027) was introduced with a detailed analysis in the Non-final Office Action Serial No. 09/548,727

dated September 22, 2004. This detailed analysis reads as follows:" "Cox teaches watermarking video (col. 2, lines 46-49 for example), providing watermarks every Nth frame or to provide periodic watermarking thru-out the video, further content owners wish to protect each and every frame, as taught by Cox." The appellants, respectfully, point out that the appealed claims were amended since this analysis of *Cox et al.* and no further analysis has been provided. Therefore, the rejection fails to indicate how *Cox et al.* reads on the appealed claims since the amendment made in the response to the September 22, 2004 Office Action.

*Cox et al.* teaches providing watermarks every Nth frame or to provide periodic watermarking thru-out the video,

#### Appealed claim 1

Appealed claim 1 defines subject matter for a method of copy protection of information stored on an information carrying medium to be read from a reading device and transmitted to an application device for playback and/or recording for the reading device to continuously derive and report to the application device a first characteristic of the content of the information transmitted from the reading device to the application device, wherein the application device continuously derives and reports back to the reading device a second characteristic of the content of the information received by the application device. The specification to the present invention defines characteristic of the information as a summary of the information. Page 5, lines 9-12 of the specification clearly states that the summaries of selected parts of the received or transmitted information are used as characteristics. *Cox et al.* teaches providing watermarks which are not summaries. Therefore, all the claimed elements are not found in the rejection.

Furthermore, the rejection does not provide any suggestion for making the combination of *Cox et al.* with *Linnartz*. Still further, the rejection does not provide any reasonable expectation of success. Therefore, the rejection does establish a *prima facie* case of obviousness.

#### Appealed claim 2

Appealed claim 2 defines the subject matter for the method of appealed claim 1, wherein summaries of the transmitted and of the received information are used as characteristics.

Serial No. 09/548,727

There is no disclosure or suggestion within *Linnartz* or *Cox et al.*, either alone or in combination, for summaries of the transmitted and of the received information to be used as characteristics.

**Appealed claim 3**

Appealed claim 3 defines the subject matter for the method of appealed claim 1, wherein summaries of selected parts of the transmitted and of the received information are used as characteristics. There is no disclosure or suggestion within *Linnartz* or *Cox et al.*, either alone or in combination, summaries of selected parts of the transmitted and of the received information are used as characteristics.

**Appealed claim 4**

Appealed claim 3 defines the subject matter for the method of appealed claim 3, wherein the selection of the parts of information to be summarized is based on a secret shared between the reading device and the application device. There is no disclosure or suggestion within *Linnartz* or *Cox et al.*, either alone or in combination, for the selection of the parts of information to be summarized is based on a secret shared between the reading device and the application device.

**Appealed claim 9**

The Examiner's Answer asserts that since the comparator receives a signal that it is transmitted in accordance with the limitations of appealed claim 9. This is wholly inconsistent with the recitation of claim 9.

**Appealed claim 10**

Appealed claim 10 defines subject matter for an application device 30 for receiving a content of information contained on a record carrier 1 from a reading device 20 for playback and/or recording as discussed page 4, lines 31-34. There is no disclosure or suggestion within *Linnartz* reporting first and second characteristic from content contained on the information carrying medium and comparing the first and second characteristics for a match. The appellants respectfully point out that the physical mark within *Linnartz* is not transmitted by the reader.

Serial No. 09/548,727



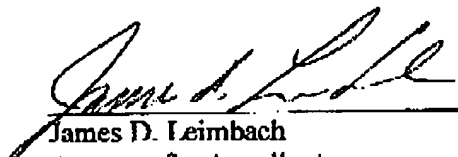
Furthermore, within *Linnartz*, the hash signal is transmitted by the reader. The decoder, within *Linnartz*, does not transmit a hash signal. The signatures within *Linnartz* are not characteristics of the content of information that is contained on the information carrying medium. Therefore, *Linnartz* can not perform a comparison of the first and second characteristics as defined by appealed 10.

### Conclusion

In summary, the examiner's rejections of the claims are believed to be in error for the reasons explained above. The rejections of each of claims 1-4, 6, and 9-11 should be reversed.

The Commissioner is authorized to charge fees associated with the filing of this brief to Account No. 50-3745 including any underpayments, excluding the payment of any issue fees, and to credit any overpayments to the same account.

Respectfully submitted,



James D. Leimbach  
Attorney for Appellants  
Registration No. 34,374

Telephone: 585-381-9983  
Facsimile: 585-381-9983

Serial No. 09/548,727